IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR
First Appeal No. 679/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
DATED : December 11, 2006

By this appeal, the appellant takes exception to the judgment and decree dated 6th September 2004 passed by First Adhoc Additional District Judge, Chandrapur in Regular Civil Appeal No.168/1995 dismissing the appeal filed by the appellant-defendant against judgment and decree dated 20th September 1995 passed by Civil Judge, Jr. Dn. Rajura in Regular Civil Suit No. 211/1989 decreeing the suit against defendant.

The respondent-plaintiff filed the above referred suit for declaration and permanent injunction against defendant who is his brother in respect of suit plot which was shown by specific letters in the plaint map. It was the case of the plaintiff

that there was oral partition and the suit property was allotted to the plaintiff. The suit was contested by the defendant. In the trial Court, the plaintiff examined Bhaurao, the third brother who according to the plaintiff was also party to the oral partition. In the cross-examination Bhaurao stated that there was written deed of partition between the parties. The trial Court, upon appreciation of the evidence held that the oral partition was proved by the plaintiff and consequently decreed the suit. The appellate Court concurred with the findings given by the trial Court and dismissed the appeal filed by the appellant-defendant.

Ms. Prabhu, learned counsel for the appellant submitted that the case set up by the plaintiff of oral partition cannot be accepted because the total area of the land which the plaintiff claims is much more than the area allegedly allotted in the oral partition to the defendant and the third brother Bhaurao. Secondly, she submitted

that both the Courts below have not considered the statement made by Bhaurao in his cross-examination that there was written partition deed between the parties which clearly belies the case set up by the plaintiff.

Per contra, Mr. M.P. Khajanchi, learned counsel for the respondent supports the findings given by both the Courts below.

Having considered the submissions made by learned counsel and having perused the records, I find no merit in the present appeal. Both the Courts below, upon appreciation of the evidence led by the parties, have come to the conclusion that there was oral partition between three bothers. This finding is a pure finding of fact recorded upon appreciation of the evidence and, therefore, cannot be termed as perverse to warrant interference in second appeal. Insofar as the statement made by Bhaurao in cross-examination that there was written partition is concerned, both the Courts have considered the impact

of the said statement and have held that the same is not fatal to the case of the plaintiff. I find no perversity in the approach of both the Courts below. It is well settled that the doctrine “Falsus in Uno Falsus in Omnibus” is not applicable in India and applying the said test, I find the statement made by Bhaurao cannot be considered as fatal to the case if plaintiff. There are concurrent findings of fact recorded by the Courts below. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

C.A. No. 8526/2004

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

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